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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/951,635	10/17/1997	MANABU KATO	00684.003135.1	1809
5514 7590 08/30/2011 FITZPATRICK CELLA HARPER & SCINTO 1290 Avenue of the Americas NEW YORK, NY 10104-3800				
EXAMINER PHAN, JAMES				
ART UNIT 2872		PAPER NUMBER		
MAIL DATE 08/30/2011		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

08/951,635

**Applicant(s)**

KATO, MANABU

**Examiner**

JAMES PHAN

**Art Unit**

2872

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 August 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 61-78 and 117-144 is/are pending in the application.
- 5a) Of the above claim(s) 120,121,123,124 and 132-144 is/are withdrawn from consideration.
- 6) ☒ Claim(s) 61-78, 118, 119,122 and 125-131 is/are allowed.
- 7) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/C.3)  
Paper No(s)/Mail Date 3/29/11
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/17/2011 has been entered.

### *Election/Restrictions*

The added claim 132 and claims 133-144 filed 08/02/2011 directed to an invention/species that is patentably distinct from the present invention/species (including claims 61-66, 69, 70, 73-76, 118, 119, 122 and 125-130 which have been searched examined and made final in the office action mailed 06/17/2010) for the following reasons: (1) the present species directed to an optical scanner which requires the curvatures in the main and sub-scanning directions are **rotationally non-symmetrical** with respect to the optical axis, the species including the added claims 132-144 does not; (2) the species including the added claims 133-144 directed to an optical scanner which requires the curvatures in the main and sub-scanning directions are **non-symmetrical** with respect to the optical axis, the present species does not.

Record shows that the present species is patentably distinct from the species including the added claims 133-144. See "**Response to Arguments**" made in the Office Action, pages 4-6, mailed 10/22/2009.

Furthermore, there would be a serious burden on the examiner if both species were searched and examined together.

Since applicant has received actions on the merits for the present species (including claims 61-66, 69, 70, 73-76, 118, 119,122 and 125-130), this species has been constructively elected for prosecution on the merits. Accordingly, claims 132-144 are withdrawn from consideration as being directed to a non-elected invention/species. See 37 CFR 1.142(b) and MPEP § 821.03.

***Allowable Subject Matter***

Claims 61-78, 118, 119,122 and 125-131 are allowed. Note that claims 67-68, 71-72 and 77-78 have been rejoined by the examiner.

***Conclusion***

This application is in condition for allowance except for the following formal matters:

- (1) the continuation data in the specification should be updated; and
- (2) the presence of claims 120-121, 123-124 and 132-144 directed to a non-elected invention/species.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

The present claimed invention is patentably distinct from the patent claims.  
Therefore, no interfering subject matter exists.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES PHAN whose telephone number is (571)272-2317. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephone B. Allen can be reached on (571) 272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Phan/  
Primary Examiner  
Art Unit 2872

Aug. 2011